

1 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

2 STATE OF HAWAII

3 -----
4 SPORTS SHINKO (USA) CO., LTD., a Delaware
5 Corporation; SPORTS SHINKO (MILILANI)
6 CO., LTD., a Hawaii corporation, et al.,
7 Plaintiff,

8 vs. Case No. 02-1-2766-11 (EEH)

9 RESORT MANAGEMENT SERVICES

10 (HAWAII), INC., a Hawaii corporation,
11 YASUO NISHIDA, SATOSHI KINOSHITA, et al.
12 Defendants.

13 -----
14
15 DEPOSITION OF SATOSHI KINOSHITA

16 (Volume II)

17
18 Taken on behalf of the Plaintiff at Alston Hunt Floyd &
19 Ing, 1001 Bishop St., ASB Tower, 18th Floor, Honolulu,
20 Hawaii 96813, commencing at 9:04 a.m., Wednesday, April
21 20, 2005, pursuant to Notice.

22
23 BEFORE: BARBARA ACOBA, CSR No. 412, RPR
24 Notary Public, State of Hawaii

25 **EXHIBIT 13**

1 APPEARANCES:

2 For Plaintiff: GLENN MELCHINGER, Esq.
3 ALSTON HUNT FLOYD & ING
4 ASB Tower
5 1001 Bishop St., 18th Floor
6 Honolulu, Hawaii 96813
7

8 For Defendant SATOSHI KINOSHITA:

9 JOHN KOMEIJI, Esq.
10 WATANABE ING KAWASHIMA & KOMEIJI
11 First Hawaiian Center
12 999 Bishop St., 23rd Floor
13 Honolulu, Hawaii 96813
14

15
16 Also Present: STEVEN SILVER - Interpreter
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ATTORNEY-CLIENT PRIVILEGE

131

1 properties of which we had no plans to sell.

2 Q. For all six properties, I think for Diamond
3 Head Beach Hotel, Queen Kapiolani, Ocean Resort and then
4 the three golf courses, do you remember what the total
5 for the termination fees was if, for example, you had to
6 pay them all, or Sports Shinko had to pay them all, do
7 you remember the grand total?

8 A. I believe it was either 3.5 million or
9 4.5 million.

10 Q. I think it's 3.5. I think that's right. So
11 Mr. Fukuda when he said he was going to, if the other
12 listed properties were sold, move those termination fees
13 to Mililani and Queen Kapiolani, what he meant by that,
14 as you understood it, was that that 3.5 million in
15 termination fees would be on only those two properties
16 or shifted into those two agreements with RMS; is that
17 right?

18 A. Well, I suppose so, however, looking at the big
19 picture, this was all hypothetical and was my
20 understanding that no matter what anybody else said, it
21 would ultimately be the president who would make the
22 call.

23 Q. As a hypothetical, even as a hypothetical, did
24 you think that seemed reasonable at that time to shift
25 all the termination fees for the other contracts to just

1 BY MR. MELCHINGER:

2 Q. So do you know if Mr. Fukuda or Mr. Kinoshita
3 asked Mr. Nishida to sign these contracts for RMS as
4 they were, without negotiation, for example?

5 A. I do not.

6 Q. Mr. Nishida had been an officer at some of the
7 Sports Shinko entities; is that right?

8 A. Yes.

9 Q. What was his relationship like, Mr. Nishida's
10 relationship, with the president?

11 A. Until the time that Mr. Nishida went off on his
12 own, their relationship was one of president/employee.

13 Q. Did Mr. Nishida ever do work specifically for
14 the president, either in Hawaii or in Japan, sort of as
15 a special executive assistant, for example?

16 A. A long time ago he used to be the secretary to
17 the president over in Japan.

18 Q. Do you know when that was, about?

19 A. Well, let's see, that was when I was still a
20 university student, so between, say, 1980 and 1985.

21 Q. So, I'm sorry, is that how long or that is
22 that -- well, do you mean for five years he was acting
23 as secretary; is that right?

24 A. I don't recall exactly as I sit here today, but
25 he did serve as secretary to the president for a few

1 years in or around that time frame. I don't recall how
2 many years it was.

3 Q. Did you have any discussion with either
4 Mr. Mukai, the president, or Mr. Fukuda about the legal
5 affect the RMS management agreements would have after
6 they were entered?

7 A. I did receive advice from Mr. Mukai.

8 Q. What was that advice?

9 A. I can recall a few things as I sit here today.
10 First of all, with regard to Mr. Nishida, Mr. Mukai
11 advised me that although Mr. Nishida was the president
12 of a small company, he nevertheless was now the
13 president of a separate and independent company and,
14 therefore, he had the full authority that that office
15 carries with it. And so I was told by Mr. Mukai that I
16 would need to forget the relationship that I once had
17 with Mr. Nishida, that of being me as vice president,
18 him as general manager, and I must now interact with him
19 as the president of a company, which he was, similar to
20 the way that Mr. Kinoshita was the president of our
21 company.

22 Q. Okay. Anything else? I think you said there
23 were a few things.

24 A. In addition, Mr. Mukai told me that since
25 Resort Management was a separate and independent company

ATTORNEY-CLIENT PRIVILEGE

152

1 subsequent to that, I had a meeting with Mr. Mukai at
2 which time he shared with me what had been discussed
3 between him and the president. And I, in turn here, was
4 reporting that to Mr. Fukuda.

5 Q. And as you noted, Mr. Mukai made a comment
6 about the affect of establishing the RMS, right, that
7 would make it hard to lien -- hard for RCC to lien the
8 Hawaii properties; is that right?

9 A. No. Actually, what Mr. Mukai communicated to
10 me was that president Kinoshita was extremely happy that
11 RMS had been established because it had made it
12 difficult for RCC to lien the Hawaii business
13 facilities, and Mr. Kinoshita apparently asked Mr. Mukai
14 to work on establishing some sort of similar arrangement
15 to the RMS arrangement in Japan.

16 Q. Was one of the purposes for the management
17 contracts and creating the management companies to make
18 it difficult for RCC to place liens on Hawaii
19 properties?

20 THE INTERPRETER: I'm sorry, can I have that
21 question one more time.

22 THE WITNESS: I had no idea about that. If you
23 look to the next paragraph under the paragraph that you,
24 Mr. Melchinger, have placed an asterisk next to, I go on
25 to write to Mr. Fukuda that if, in fact, it had become

ATTORNEY-CLIENT PRIVILEGE

168

1 A. I have. Yes.

2 Q. Okay. It appears to be a request to move the
3 closing date to the 25th; is that what this is, sent to
4 Mr. Hamasaki, Peter Hamasaki, from you?

5 A. Yes.

6 Q. Do you remember why you sent this to
7 Mr. Hamasaki?

8 A. I do.

9 Q. Could you tell me why.

10 A. Because I was instructed to do so by the
11 president over the telephone.

12 Q. Did he tell you anything about why the closing
13 date needed to be moved to the 25th?

14 A. What I recall was that I was told that the
15 management on the Japan side was in a real bind and the
16 president wanted us to hurry up and send the sales
17 proceeds over to Japan.

18 Q. Okay. Did he explain why there was a need to
19 hurry? I'm sorry, let me clarify the question.

20 Did the president explain to you why there was
21 a need to accelerate the closing date, other than that?

22 A. Beginning around November the year 2001, the
23 company on the Japan side was in a real pinch. They
24 were short on funds and in specific terms, for example,
25 cash flow was so bad that Sports Shinko in Japan was not

ATTORNEY-CLIENT PRIVILEGE

169

1 even able to make the interest payments that it had
2 agreed to make with the some 50 financial institutions,
3 including RCC, that the Japan Sports Shinko company had
4 borrowed money from. And so I, beginning in November,
5 had been told constantly that we needed to hurry up and
6 make the sale and send the proceeds of the sale to
7 Japan. We ended up -- this ended up spilling over into
8 the next year, into 2002, and by then the company was in
9 a real, real bind, and I was told pretty much on a daily
10 basis to expedite this, and I received the instructions
11 directly by telephone -- by telephone directly.

12 Q. Just to clarify, that was directly from the
13 president by telephone?

14 A. That's correct.

15 Q. Was the closing date, then, actually changed to
16 the 25th from the 28th; do you recall?

17 A. I don't recall.

18 Q. Do you recall at some point hearing about, from
19 the president, a meeting that he had had with any of the
20 lenders or RCC in early January of 2001?

21 MR. KOMEIJI: Same objection about relevancy.

22 MR. MELCHINGER: I'm sorry, not 2001. 2002.

23 MR. KOMEIJI: Same objection as relevancy. Not
24 reasonably calculated to lead to discovery of admissible
25 evidence.

ATTORNEY-CLIENT PRIVILEGE

195

C E R T I F I C A T E

STATE OF HAWAII)

CITY AND COUNTY OF HONOLULU)

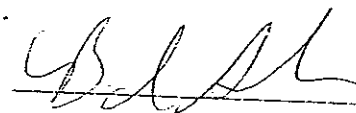
I, BARBARA ACOBA, Certified Shorthand
Reporter and Notary Public, State of Hawaii, do
hereby certify:

That on Wednesday, April 20, 2005, at
9:04 a.m., appeared before me SATOSHI KINOSHITA, the
witness whose deposition is contained herein; that
prior to being examined he was by me duly sworn;

That the deposition was taken down by me
in machine shorthand and was thereafter reduced to
typewriting under my supervision; that the foregoing
represents, to the best of my ability, a true and
correct transcript of the proceedings had in the
foregoing matter.

I further certify that I am not an attorney
for any of the parties hereto, nor in any way concerned
with the cause.

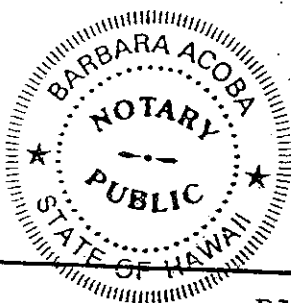
Dated this 30th day of April, 2005,
in Honolulu, Hawaii.



BARBARA ACOBA, CSR NO. 412

Notary Public, State of Hawaii

My Commission Exp: 10-22-2008



RALPH ROSENBERG COURT REPORTERS
Honolulu, Hawaii (808) 524-2090

ATTORNEY-CLIENT PRIVILEGE

196

1 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
2 STATE OF HAWAII
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4 SPORTS SHINKO (USA) CO., LTD., a Delaware
5 Corporation; SPORTS SHINKO (MILILANI)
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9 RESORT MANAGEMENT SERVICES
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11 YASUO NISHIDA, SATOSHI KINOSHITA, et al.
12 Defendants.
13 -----

14
15 DEPOSITION OF SATOSHI KINOSHITA

16 (Volume III)
17

18 Taken on behalf of the Plaintiff at Alston Hunt Floyd &
19 Ing, 1001 Bishop St., ASB Tower, 18th Floor, Honolulu,
20 Hawaii 96813, commencing at 9:00 a.m., Thursday, April
21 21, 2005, pursuant to Notice.
22

23 BEFORE: BARBARA ACOPA, CSR No. 412, RPR
24 Notary Public, State of Hawaii
25

RALPH ROSENBERG COURT REPORTERS
Honolulu, Hawaii (808) 524-2090

EXHIBIT _____

ATTORNEY-CLIENT PRIVILEGE

197

1 APPEARANCES:

2 For Plaintiff:

GLENN MELCHINGER, Esq.

3 ALSTON HUNT FLOYD & ING

4 ASB Tower

5 1001 Bishop St., 18th Floor

6 Honolulu, Hawaii 96813

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8 For Defendant SATOSHI KINOSHITA:

9 JOHN KOMEIJI, Esq.

10 WATANABE ING KAWASHIMA & KOMEIJI

11 First Hawaiian Center

12 999 Bishop St., 23rd Floor

13 Honolulu, Hawaii 96813

14
15
16 Also Present:

STEVEN SILVER - Interpreter

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234

1 relevancy and not reasonably calculated to lead to the
2 discovery of admissible evidence in this matter.

3 THE WITNESS: As far as I recall, there were
4 three meetings that were held with the KG Group, and
5 you're asking me about the individuals who were
6 involved, so let's take them in order. The first of
7 those three meetings was a telephone conference between
8 me and KG, so there was nobody else involved. The
9 second meeting I attended with the president of our
10 company. And the third meeting involved the McCorriston
11 law firm and the attorneys for the KG Group side.

12 BY MR. MELCHINGER:

13 Q. Do you recall when the meeting -- when you had
14 a meeting with Toshio and somebody from KG, the number
15 two point that you mentioned?

16 A. It was sometime in late December of 2001.

17 Q. Where was it?

18 A. In Tokyo.

19 Q. So somebody from KG came to Tokyo?

20 A. Yes.

21 Q. And the only people present were you and the
22 president and somebody from KG; is that right?

23 A. I believe so.

24 Q. The president doesn't speak English very well,
25 right?

ATTORNEY-CLIENT PRIVILEGE

235

1 A. That's correct.

2 Q. Was there an interpreter or somebody present at
3 the meeting?

4 A. Yes. That's correct. There was an interpreter
5 present.

6 Q. Do you remember who that was?

7 A. It was a gentleman named Mr. Takahashi,
8 T-a-k-a-h-a-s-h-i.

9 Q. Is that somebody who KG brought with them, or
10 who was Mr. Takahashi affiliated with, if anybody?

11 A. He was an interpreter that KG had brought with
12 them.

13 Q. So Mr. Takahashi came from Hawaii, as far as
14 you know?

15 A. Right.

16 Q. Do you know if Mr. Takahashi was a KG employee
17 or how did Mr. Takahashi introduce himself?

18 A. He introduced himself as Takahashi, the
19 interpreter.

20 Q. From KG was it Wayne Tanigawa who was present;
21 is that right?

22 A. Yes.

23 Q. Was there anybody else from KG?

24 A. No.

25 Q. Was there anybody else from Sports Shinko,

ATTORNEY-CLIENT PRIVILEGE

240

1 A. I don't know.

2 Q. So it's your understanding that Mr. Mukai spoke
3 with somebody at KG and KG sent you this letter, Exhibit
4 50; is that right?

5 A. Yes.

6 Q. Did you ever talk with Mr. Mukai at any point
7 in time about what he discussed with KG before they sent
8 this letter, Exhibit 50?

9 A. No.

10 Q. Do you know what Mr. Mukai's relationship is
11 with either Bert Kobayashi, the developer, or KG?

12 A. No.

13 Q. Even today, you don't know; is that right?

14 A. Right.

15 Q. Was it your understanding, then, that Mr. Mukai
16 had sort of introduced KG to Sports Shinko; is that
17 right?

18 A. Yes.

19 MR. MELCHINGER: I think the translation was --
20 off the record. I need to clarify. Actually, could the
21 Translator just retranslate.

22 THE INTERPRETER: Sure.

23 BY MR. MELCHINGER:

24 Q. Was it your understanding, then, in 2001,
25 December, that Mr. Mukai had introduced KG to Sports

ATTORNEY-CLIENT PRIVILEGE

241

1 Shinko?

2 A. Yes.

3 Q. Did you ever have any discussion with Mr. Mukai
4 or anybody else at the McCorriston law firm regarding
5 how Kobayashi Group came to make the offer that's in
6 Exhibit 54?

7 A. Yes.

8 Q. Do you know about when that was, what time?

9 A. It would have been at some point in time
10 between December 4th, 2001, and December 11th, but I
11 don't recall exactly when it was.

12 Q. Was that a telephone conference or personal
13 meeting with Mr. Mukai or who was present and how was
14 the conference held?

15 A. It was either via the telephone or I may have
16 met with him in person. I don't recall.

17 Q. But it was with Mr. Mukai, not Mr. Kawatani or
18 somebody else from the office; is that right?

19 A. Right.

20 Q. And what did he tell you during that
21 conference?

22 A. He said that the Kobayashi Group was interested
23 not just in submitting a letter expressing their
24 interest, but in submitting an offer and he wanted us to
25 provide them with financial information.

ATTORNEY-CLIENT PRIVILEGE

296

C E R T I F I C A T E

STATE OF HAWAII)

CITY AND COUNTY OF HONOLULU)

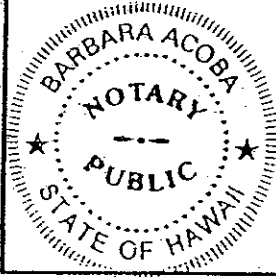
I, BARBARA ACOBA, Certified Shorthand
Reporter and Notary Public, State of Hawaii, do
hereby certify:

That on Thursday, April 21, 2005, at
9:00 a.m., appeared before me SATOSHI KINOSHITA, the
witness whose deposition is contained herein; that
prior to being examined he was by me duly sworn;

That the deposition was taken down by me
in machine shorthand and was thereafter reduced to
typewriting under my supervision; that the foregoing
represents, to the best of my ability, a true and
correct transcript of the proceedings had in the
foregoing matter.

I further certify that I am not an attorney
for any of the parties hereto, nor in any way concerned
with the cause.

Dated this 30th day of April, 2005,
in Honolulu, Hawaii.



[Signature]
BARBARA ACOBA, CSR NO. 412

Notary Public, State of Hawaii

My Commission Exp: 10-22-2008

RALPH ROSENBERG COURT REPORTERS
Honolulu, Hawaii (808) 524-2090